IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.1408 OF 2004

Mrs. Bindu S. Mewar. ...Petitioner.
Vs.
State of Maharashtra & Ors. ...Respondents.
....
Mr. K. R. Bulchandani with J.P. Shah for the Petitioner.
Mr.K. K. Singhvi, Senior Advocate with Mrs. Meena Doshi & Mrs. V. K. Khatu for Respondent Nos.2 and 3.
.....

CORAM : A.P. SHAH AND
DR.D.Y.CHANDRACHUD, JJ.

July 21, 2005.

ORAL ORDER (PER DR. D. Y. CHANDRACHUD, J.):

The Mumbai Heritage Conservation Committee has, in its report dated 9th August 2003, come to the conclusion that the hoarding of the Petitioner is liable to be removed on the ground that it violates Guideline 1 of the Guidelines framed by the Committee which is as follows :

> **"1. Hoardings attached to Listed Heritage Buildings/Structures or to Buildings/Structures (listed or unlisted) within Heritage Precincts**
>
> No hoarding/advertisement shall be permitted which is attached in any manner to the facade or on top (i.e. On the terrace or roof, including its ridge) of any listed heritage building/structure or any building/structure (listed or unlisted) within a heritage precinct."

2. The hoarding in question, is situated at Tulshidas Gopaljee Charitable Trust Building, Bhulabhai Desai Road. On behalf of the Petitioner it has been submitted that the hoarding in question, does not fall in a listed heritage precinct. According to the Petitioner, the Mahalaxmi Precinct has not been listed as a heritage precinct in the list notified by the State Government in pursuance of the provisions of Development Control Regulation 67.

3. Before the Mumbai Heritage Conservation Committee submitted its report in pursuance of the directions issued by this Court in its judgment and order dated 19th April 2003, an opportunity was furnished, in consonance with the principles of natural justice, to the hoarding owners and advertisers to submit their representations before the Committee. However, having regard to the dispute which was sought to be raised in these proceedings, this Court by an interim order dated 16th June 2004, directed the Chairperson of the Heritage Committee to file an affidavit in order to clarify as to whether the hoarding of the Petitioner would be covered in the Mahalaxmi Precinct as notified. The Chairperson of the Mumbai Heritage Conservation Committee

has accordingly filed an affidavit dated 7th July 2004 in pursuance of the directions issued by the Court. The affidavit of the Chairperson states thus:

> "The map of this precinct which as mentioned above, forms a part of the SCHEDULE and bears the signature of the then Secretary to Govt. Urban Development Department, also indicates the area and boundary of "Mahalaxmi Precinct" and this boundary has also been marked on the relevant D. P. sheet of 'D' Ward. Further, ever since the coming into force of D.C. Regulation 67 in June 1995, the M. H. C. C. has all along considered the area defined/demarcated as per the said map as the listed Mahalaxmi Precinct and all development proposals relating to buildings/properties falling within the said Precinct area/boundary have been referred to the MHCC for its advice/NOC. It is observed that the relevant hoardings of the three hoarding owners (including the present Petitioner), who have made their representations to the Committee, are located within the area/boundary of "Mahalaxmi Precinct" as depicted in the aforementioned map (which is a part of the SCHEDULE, as well as within the area/boundary of the said Precinct marked on the relevant D.P. sheet of 'D' ward.)"

4. In the submission of the Petitioner, what is listed in the notification of the State Government at Entry 442, is the Mahalaxmi Temple Complex and not the entire Mahalaxmi Precinct. This aspect has been duly considered by the Heritage Conservation Committee and we find no reason to take a different view from an expert body drawn from a cross section of experts. As the

Committee has noted, the map of Mahalaxmi precinct forms a part of the notification and the map indicates the boundaries of the aforesaid precinct. The hoarding in question falls within the boundaries of the precinct shown in the map. The Committee has noted that ever since June 1995, when Development Control Regulation 67 came into force, all development proposals relating to buildings and properties situated in the Mahalaxmi precinct have been submitted to it for clearance. The notification inter alia sets out the reasons for notifying a particular structure or precinct as a heritage precinct. In so far as the Mahalaxmi precinct is concerned, the reasons include (i) the value thereof for architectural and cultural reasons; (ii) the date, period and design of the building or artefact, its value as a part of a group of buildings; (iii) a vista of natural/scenic beauty or interest, unique value; and (iv) open spaces integrally planned with their associated areas having a distinctive way of life. This emerges from the explanations contained at the end of the list. An artificial or restrictive construction as proposed by the Petitioner cannot be adopted. If Mahalaxmi Temple alone were to be regarded as a listed structure and not the precinct that would completely defeat the provisions of the notification. The view of the Mumbai Heritage

Conservation Committee which is an expert body constituted under Development Control Regulation 67 must be given due deference and this Court would not be justified in interfering with that view having regard to the parameters of the jurisdiction under Article 226 of the Constitution. The view is neither perverse nor illegal. We, therefore, do not find any reason to interfere in the exercise of our jurisdiction under Article 226 of the Constitution. The petition is accordingly dismissed.

5. In order to enable the Petitioner to have recourse to its remedies against this judgment and order, there shall be a direction to the effect that the hoarding shall not be liable to be removed until 15th October 2005.

.....